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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6837 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GHANSHYAMBHAI NANUBHAI GOHIL

Versus

EXECUTIVE ENGINEER,

Appearance:

1. Special Civil Application No. 6837 of 2001

MR TR MISHRA for Petitioner No. 1

MR RV DESAI, AGP for Respondents No. 1-2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 07/12/2001

ORAL JUDGEMENT

Rule. Mr RV Desai, learned AGP waives service of Rule for the respondents.

2. In this petition under Article 227 of the Constitution, the petitioner has challenged the judgment and award dated 30.11.2000 passed by the Labour Court,

Bhavnagar dismissing petitioner's Reference (LCB) No. 228 of 1994 on the ground that the workman had not led any documentary or oral evidence in support of his case.

3. Mr TR Mishra, learned counsel for the petitioner submits that after filing the statement of claim when the matter was taken up for evidence, the workman had examined himself as a witness on 24.4.1997 and the respondents had not even remained present to cross-examine the petitioner. Moreover, as noted by the Labour Court itself, the respondent-department neither appeared before the Labour Court nor led any evidence and, therefore, the Labour Court ought to have accepted the petitioner's case that the petitioner was employed by the respondents as a peon from 1.4.1992.

4. On the other hand, Mr RV Desai, learned AGP for the respondents has submitted that the respondents are officers in the Irrigation Department of the State Government which is not an industry within the meaning of Industrial Disputes Act, 1947 and has placed reliance on the decision of the Apex Court in the case of State of Gujarat vs. Pratamsingh Narsinh Parmar, JT (2001) 3 SC 326.

5. Having heard the learned counsel for the parties, it appears to the Court that since the respondents had not appeared before the Labour Court, much less led any evidence, it would be just and proper to remand the matter to the Labour Court for the purpose of giving an opportunity to the respondents who will be at liberty to raise all contentions available to them including the contention that the respondents do not carry on any industry within the meaning of the Industrial Disputes Act, 1947. As and when such contentions are raised by the respondents, the Labour Court shall decide the same in accordance with law.

6. There has been some dereliction of duty on the part of some officers/employees being respondents themselves or their subordinates. But for the erroneous approach adopted by the Labour Court, an award might have been passed against the respondents saddling the public exchequer with heavy amounts if an order for reinstatement and/or backwages were to be passed against the respondents. The officers of the State Government may have several important duties to attend but that does not mean that when their orders are challenged before a Court of law, they can choose to ignore such legal proceedings with impunity. In appropriate cases in future, the Court may pass orders requiring such

officers/employees to pay exemplary costs to the other side or they may themselves be saddled with the liability to pay backwages if an award for backwages is passed against the Government.

6. In view of the above discussion, the matter is remanded to the Labour Court for the purpose of giving an opportunity to the respondents who will be at liberty to raise all contentions available to them including the contention that the respondents do not carry on any "industry" within the meaning of the Industrial Disputes Act, 1947.

7. The petition is accordingly disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

8. Writ be sent down to the Labour Court, Bhavnagar forthwith which shall send the notice for the next day of hearing to the petitioner as well as to the respondents as expeditiously as possible and the Labour Court shall hear and decide the reference as expeditiously as possible and preferably by 30.4.2002.

(M.S. Shah, J.)

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